IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15396 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYANTIBHAI BABALDASBHAI DARJITHRO' ITS POWER OF ATTORNEY

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 15396 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1

MR DIPEN DESAI, Ld. AGP for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/12/2004

ORAL JUDGEMENT

Rule. Mr.Desai, learned AGP waives service of rule on behalf of respondents No.1 and 2 and with the

consent of the parties the matter is taken up for final hearing today.

2. The short facts of the case are that the land was converted for N.A. purpose in the year 1984 and one of the conditions inter alia was to initiate the construction within a period of six months and complete the same within a period of three years. It is the case of the petitioner that due to drought situation the petitioner could not start with the construction within the stipulated time. It appears that the Mamlatdar, Harij prepared the report and forwarded to the District Collector. On the basis of the said report show-cause notice was issued by the District Collector in breach of the conditions of the order for converting the land for N.A. purpose. It appears that the petitioner appeared in response to the show-cause notice and on behalf of all the persons, Darji Naranbhai Mohandasbhai and Darji Narsibhai Mohandasbhai remained present and stated that because of water scarcity and drought situation, the construction could not be made. However, they stated that now the water can be made available from the Municipality and, therefore, the prayer was made to impose fine and extend the period for making construction. It appears that thereafter the Collector passed the order on 7.12.2001, whereby he found that there are no proper reasons for breach of the conditions and the prayer for extension of the period does not deserve to be granted and, therefore, the permission for N.A. is cancelled. It appears that the petitioner carried the matter before the State Government in revision under section 211 of Bombay Land Revenue Code and the State Government ultimately rejected the revision by confirming the order passed by the District Collector as per the order dated 31.1.2004 and it is under these circumstances the petitioner has approached this Court by preferring this petition.

3. When the matter was considered for the first time on 30.11.2004, a declaration was made on behalf of the petitioner that the petitioner is ready to make construction within a period of two years from today if the period is extended and the petitioner is also ready to pay the amount of penalty, which may be found appropriate by this Court for extension of the period for completion of the construction. It appears that the question raised in this petition is covered by the decision of this Court in case of "Dahyabhai Laldas (Deceased) through his heirs and legal representatives v. State of Gujarat", reported in 1997(2) GLH, 633, whereby the view taken is that the condition providing for

completion of the construction can be said as directory and not mandatory and N.A. permission cannot be cancelled if construction could not be completed within the stipulated time limits on account of certain circumstances beyond the control like lack of availability of construction material in whatsoever form for a reasonably long period. At para 8 of the said decision it was observed by the Court as under:

> "8. Besides, fixation of the time-limit for the purpose of completion of the construction work pursuant to the order at Annexure A to this petition was a directory condition and not a mandatory condition. The N.A. permission could not have been cancelled if the deceased could not have completed the construction work within the stipulated time-limit on account of certain circumstances beyond his control like non-availability of construction material in whatever form for a reasonably long period. In that case, the authority might have been required to extend the time-limit on being satisfied about the genuineness of the ground for its extension. In that view of the matter, omission on the part of the deceased in making an application for extension of the time-limit for completion of the construction work can be said to be a mere technical breach not warranting any serious or severe action of cancellation of the N.A. permission. Respondent No. 2 appears to have remained oblivious to this aspect of the matter. The impugned order at Annexure F to this petition as affirmed in revision by the order at Annexure G to this petition cannot therefore be sustained in law on the ground of non-application of mind on the part of its author."

4. If the impugned orders are examined in light of the observations made by this Court it is apparent that the matter is not considered accordingly and no examination is made by the District Collector or by the State Government while confirming the order that whether the circumstances were beyond the control of the petitioner and/or whether there was genuineness for grant of extension. It appears that if the ground is non-availability of water and drought situation and on account of the same if the construction could not be made, it can be said that such ground was beyond the control of the holder of the land. Therefore, in any case the permission for N.A. permission could not have been cancelled and at the most, the matter could be

considered for the purpose of imposing penalty upon the petitioner, even as recorded hereinabove the petitioner has also agreed for payment of the penalty.

5. Considering the facts and circumstances, the time limit has expired as the limit for completing the construction expired as back as in the year 1987 and as per the provisions of Rule 100 there are enabling power with the District Collector to impose the penalty upto 40 times revenue assessment and as the petitioner has shown willingness to pay the penalty and as the petitioner is ready to complete the construction within a period of two years, I find that no useful purpose would be served in remanding the matter once again to the District Collector for considering the matter for imposition of penalty and for extension of period.

6. Mr.Desai, learned AGP has also not seriously objected to the course which may be adopted by the Court for imposing penalty upon the petitioner and for extension of the period.

7. Hence, considering the facts and circumstances, I find that the order passed by the Collector cancelling the N.A. permission deserves to be quashed and set aside, but at the same time, the petitioner would be liable to pay the penalty of 40 times of revenue assessment, in case petitioner is desirous to seek extension for the period of two years for completing the construction. Hence, while quashing the order passed by the District Collector and its confirmation thereof by the State Government, it is further directed that if the petitioner pays penalty of 40 times of revenue assessment with the District Collector within a period of one month from today, the period for completing the construction shall stand extended for a period of two years from today and the petitioner shall abide by the said declaration made before this Court for completing the construction within the stipulated time limit.

8. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

22.12.2004 (Jayant Patel, J.)

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